Supreme Court, U.S.
FILED

051174 JAN 12 2006

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Docket No. _____

THE SUPREME COURT OF THE UNITED STATES

JOHN W. BROOKS

Petitioner

versus

LUBBOCK COUNTY HOSPITAL d/b/a UNIVERSITY MEDICAL CENTER

Respondent

On Petition for Writ of Certiorari for the Texas Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A. Whether, under the relation-back doctrine as applied in employment discrimination claims, Petitioner timely filed a charge of discrimination against Respondent with the Equal Employment Opportunity Commission where he first sent a communication to the Equal Employment Opportunity Commission on October 10, 2000 notifying it of complaints of discrimination against Respondent but did not complete and file a formal charge of discrimination with the Equal Employment Opportunity Commission until July 18, 2001?

PARTIES TO THE PROCEEDING

PETITIONER

JOHN W. BROOKS

RESPONDENT

LUBBOCK COUNTY HOSPITAL d/b/a UNIVERSITY MEDICAL CENTER

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STATEMENT OF COURT'S JURISDICTION

This Court has jurisdiction in the instant case. The Order of Dismissal which is sought to be reviewed in this case was entered by the 237th District Court in Lubbock County, Texas November 21, 2003. The decision of the intermediate court of appeals was entered on May 24, 2005. (See Appendix B and C). Petitioner's motion for rehearing by the Texas Supreme Court was denied on October 14, 2005. Petitioner believes that this Court is conferred jurisdiction to review by 28 U.S.C.A. §1257. The federal regulation which is called into question in this case is 29 C.F.R. §1601.12. Notification of this petition for writ of certiorari has been attached hereto and has been sent to the appropriate attorneys for the Respondent.

REGULATIONS INVOLVED IN THIS CASE

The regulation at issue in this case is 29 C.F.R. §1601.12 which states:

> (a) Each charge should contain the following:
>
> (1) The full name, address, and telephone number of the person making the charge except as provided in §1601.7;
>
> (2) The full name and address of the person against whom the charge is made, if known (hereinafter referred to as the respondent);
>
> (3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices: See § 1601.15(b);

(4) If known, the approximate number of employees of the respondent employer or the approximate number of members of the respondent labor organization, as the case may be; and

(5) A statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a State or local agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Commission receives from the person making the charge a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of. A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge will relate back to the date the charge was first received. A charge that has been so amended shall not be required to be redeferred. 29 C.F.R. §1601.12

STATEMENT OF FACTS

Petitioner is an African American employee of Respondent who

complains of discriminatory conduct that occurred from July 2000 to January 2001. (See Appendix G). During this time, Petitioner was demoted to a position that he felt was below his capabilities and was denied the opportunity to be interviewed for positions that he believes he was qualified to hold. (Id). Due to this discriminatory behavior, Petitioner sent a communication to the Equal Employment Opportunity Commission (hereinafter referred to as the "EEOC") on October 10, 2000 with regard to his complaint against Respondent. (See Appendix E). This communication had attached to it several memos and electronic mail messages that Petitioner had received at work and that he believed supported his claim of discrimination. (Id). On July 18, 2001, outside the formal time period for filing a discrimination complaint, Petitioner filled out and filed a formal charge of discrimination with the EEOC and the Texas Commission on Human Rights (hereinafter referred to as "TCHR").

Respondent filed a plea to the jurisdiction in the trial court claiming that Petitioner failed to exhaust the administrative remedies available to him under state law. The basis for the plea is Respondent's contention that Petitioner did not timely file a complaint with the EEOC/TCHR. Petitioner argued that under the relation back doctrine, which is also codified in Texas law and in 29 C.F.R. §1601.12, the October 10, 2000 communication sent by him to the EEOC constituted a timely filed complaint of discrimination. The trial court found that it lacked jurisdiction, and dismissed the case. Petitioner then filed a motion for new trail which was overruled by operation of law. Petitioner appealed the judgment of the trial court to the Court of Appeals for the Seventh District of Texas at Amarillo, asserting that the trial court erred in dismissing the case for lack of subject matter jurisdiction. The court of appeals affirmed the judgment of the trial court. (Appendix C). Petitioner then asked the Supreme Court of Texas to review the decisions made in the case, but the Supreme Court of Texas refused to do so. (Appendix D).

The federal question regarding whether Petitioner's October 10, 2000 communication to the EEOC is sufficient under the relation back doctrine

to cause the formal EEOC charge to relate back to the date of the communication was raised at the very outset of this case in the trial court. Both the trial court and the court of appeals for the Seventh District of Texas at Amarillo failed to apply the relation back doctrine to the instant case. The October 10, 2000 letter to the EEOC, which the formal EEOC complaint should relate back to, was first identified in the Petitioner's Original Petition at the trial court level. The relation back doctrine was also raised in Petitioner's Brief to the court of appeals and in his petition for review to the Supreme Court of Texas.

ARGUMENT

This Court should grant the petition for writ of certiorari in this case because the decisions in the lower courts failed to apply the relation back doctrine to Petitioner's case, thus putting the integrity of the relation back doctrine in question. Whether the relation back doctrine, as adopted by numerous courts, including this Court and as codified in the Code of Federal Regulations and various Texas statutes, should be applied to a case such as this, is a question that should be addressed by this Court. Further, the federal courts of appeals are in conflict regarding whether uncomplete and informal letters and intakes sent to the EEOC constitute documents to which the relation back doctrine would apply. Additionally, the decision of the lower courts in this case conflict with the United States Supreme Court case *Edelman v. Lynchburg College*, 535 U.S. 106, 122 S.Ct. 1145, 152 L.Ed.2d 188 (U.S. 2002).

A. Whether, under the relation-back doctrine as applied in employment discrimination claims, Petitioner timely filed a charge of discrimination against Respondent with the Equal Employment Opportunity Commission where he first sent a communication to the Equal Employment Opportunity Commission on October 10, 2000 notifying it of complaints of

discrimination against Respondent but did not complete and file a formal charge of discrimination with the Equal Employment Opportunity Commission until July 18, 2001?

Due to the fact that Petitioner sent a communication to the EEOC on October 10, 2000 notifying it of complaints he had about Respondent, under the relation back doctrine as applied by numerous courts and as codified in 29 C.F.R. §1601.12, Petitioner did timely file his charge of discrimination with the EEOC which then made his state law discrimination claims timely.[1] This court should grant certiorari to discuss the issue of whether the communication that Petitioner sent to the EEOC on October 10, 2000 should be deemed sufficient for the trial court to have jurisdiction. Texas appellate courts have, in the past, correctly used the relation back doctrine and applied it to cases such as the one at bar, where the claimant initially made contact with the EEOC prior to the deadline for filing a discrmination complaint but failed to file a fully conforming complaint until after the deadline. See *Stanley Stores v. Chavana*, 909 S.W.2d 554 (Tex. App. - Corpus Christi 1995, writ denied). Under the doctrine, the formal complaint, although filed with the EEOC after the deadline, serves to amend the original contact and correct any defects therein so that the case can be heard by the EEOC. See *Id*; 29 C.F.R. §1601.12; Tex. Lab. Code §21.201; 40 T.A.C. §19.71. This approach, which was not followed by the lower courts in this case, is consistent with federal rules and caselaw involving EEOC complaints.

The relation back doctrine has been applied under federal law. EEOC regulations clearly state that a charge with the EEOC must consist of a "written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of." 29 C.F.R. §1601.12(b). A defective charge may be amended to cure technical defects

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[1]Under Texas law, a charge of discrimination timely filed with the EEOC constitutes a jointly filed charge of discrimination under state law. Texas Labor Code §§21.201(a) and 21.202 (a).

or omissions, including a failure to verify the charge, or to clarify and amplify allegations made therein. Such amendments will relate back to the date the charge was first received. 29 C.F.R. §1601.12 (b).

In *Edelman v. Lynchburg College*, 535 U.S. 106, 122 S.Ct. 1145, 152 L.Ed.2d 188 (U.S. 2002), this Court held that the relation back doctrine did apply when the petitioner sent the EEOC an unverified complaint and then later amended that complaint with a verified version after the applicable statute of limitations had run. This court noted that the relation back doctrine as codified in the U.S.C.A. and the C.F.R. would apply. *Id.* The court also noted that nowhere in the U.S.C.A was the term "charge" defined. *Id.* at 112. The court also noted that "the point of the time limitation is to encourage a potential charging party to raise a discrimination claim before it gets stale, for the sake of a reliable result and a speedy end to any illegal practice that proves out. *Id.* at 112-113.

In the instant case, when Petitioner sent his communication and the attachments thereto to the EEOC on October 10, 2000, the EEOC was made aware that Petitioner believed that unlawful discrimination was being practiced against him by Respondent. The lower courts in this case have ignored this court's ruling in Edelman by not applying the relation back doctrine to this claim filed by Petitioner with the EEOC. Therefore, in keeping with it's previous holdings, this court should find that the formal charge filed by Petitioner should relate back to the communication that Petitioner sent to the EEOC on October 10, 2000.

Additionally, the October 10, 2000 communication should be sufficient to cause his formal charge to relate back to the communication because employment discrimination charges should be construed with the "utmost liberality." *Price v. Southwestern Bell Telephone Company* 687 F.2d 74 (5th Cir. 1982). In *Price* the Fifth Circuit Court of Appeals held that "courts must remain flexible when reviewing failures of persons unfamiliar with administrative complexities to comply with procedural rules. We should not regard such rules as rigid jurisdictional prerequisites." *Id.* at 78. Further, the court in *Price* held that "we construe employment